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FEDERAL ELECTION COMMISSION

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Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

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RAD REFERRAL: 15L-39

DATE REFERRED: October 27, 2015

DATE OF NOTIFICATION: November 2, 2015

DATE OF LAST RESPONSE: November 24, 2015

DATE ACTIVATED: January 4, 2016

ELECTION CYCLE: 2014

EXPIRATION OF SOL: July 15, 2019

SOURCE:

RAD REFERRAL

RESPONDENTS:

State Tea Party Express

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30104(c) and (g)

11 C.F.R. § 109.10(b), (d), and (e)

INTERNAL REPORTS CHECKED:

RAD Referral Documents

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter was generated by a referral from the Commission's Reports Analysis Division ("RAD") to the Office of General Counsel ("OGC") concerning State Tea Party Express's ("STPE") failure to timely file the 2014 July Quarterly Report to support independent expenditures. We recommend that the Commission open a MUR and find reason to believe that STPE violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) and (e) by failing to timely file the 2014 July Quarterly Report. We further recommend that the Commission authorize pre-probable cause conciliation with STPE.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

STPE is registered with the IRS as a 501(c)(4) social welfare organization.¹ It is not registered with the Commission as a political committee and therefore does not file regular disclosure reports with the Commission. In April 2014, STPE filed two 24-Hour Reports disclosing a total of \$106,137.99 in independent expenditures.² STPE did not file a July Quarterly Report for independent expenditures made during the corresponding quarterly reporting period of April 1, 2014 through June 30, 2014.

On August 7, 2014, RAD sent STPE a Notice of Failure to File concerning the 2014 July Quarterly Report, which had been due on July 15, 2014.³ STPE filed a 2014 July Quarterly Report on August 28, 2014.⁴ The report disclosed the independent expenditures previously disclosed on the two 24-Hour Reports but did not disclose any additional activity.⁵ Five months later, on January 28, 2015, RAD sent STPE a Request for Additional Information inquiring whether STPE had received any contributions intended to further the specific independent expenditures that it had reported.⁶ On March 4, 2015, STPE filed an Amended 2014 July Quarterly Report, which made no changes to the previously disclosed expenditures but included

¹ See <http://www.stateteapartyexpress.org/>.

² See RR 15L-39 at 1 (Oct. 27, 2015). STPE had not previously reported any expenditures or receipts to the Commission.

³ See RR 15L-39 at 1.

⁴ See *id.* at 2.

⁵ See *id.*

⁶ See *id.*

receipts totaling \$111,000 that were not previously disclosed.⁷

RAD referred STPE to OGC for its failure to timely file the 2014 July Quarterly Report.

After the matter was referred to OGC, STPE's treasurer submitted a response explaining that she had mistakenly believed that non-registered entities such as STPE were only required to file 24-Hour Reports.⁸ She noted that the independent expenditures were accurately disclosed to the public in advance of the election via the timely 24-Hour Reports.⁹ She further stated that STPE had reviewed its internal reporting process and "plans to work with others who are more familiar with the requirements of non PAC entities for future cycles should we become active."¹⁰

B. Legal Analysis

Entities that are not political committees within the meaning of the Federal Election Campaign Act of 1971, as amended (the "Act"), must file disclosure reports with the Commission when they make independent expenditures that meet certain aggregate thresholds.¹¹ The timing and threshold for the required report depends on when the entity makes the independent expenditures during the election cycle. Specifically, if the entity makes independent expenditures aggregating \$10,000 or more within a calendar year with respect to a given election any time prior to the 20th day before the election, the entity must file a 48-Hour Report disclosing

⁷ See *id.*

⁸ STPE Resp. at 1 (Nov. 24, 2015).

⁹ *Id.*

¹⁰ *Id.*

¹¹ An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified Federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent. 52 U.S.C. § 30101(17).

1 those expenditures.¹² If the entity makes independent expenditures aggregating \$1,000 or more
2 with respect to a given election after the 20th day before the date of an election, but more than 24
3 hours before the date of an election, the entity must file a 24-Hour Report disclosing those
4 expenditures.¹³

5 In addition, entities that are not political committees within the meaning of the Act that
6 spend in excess of \$250 on independent expenditures during a calendar year with respect to a
7 given election must also file a quarterly report for any quarterly period in which the independent
8 expenditures exceed \$250 and any subsequent quarterly period during that calendar year when
9 additional independent expenditures are made.¹⁴ Such reports must disclose the independent
10 expenditures and contributions in excess of \$200 made for the purpose of furthering the reported
11 independent expenditures.¹⁵

12 During the second quarter of 2014, STPE made \$106,137.99 in independent expenditures
13 but failed to file a 2014 July Quarterly Report disclosing these expenditures and the associated

¹² 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The entity must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

¹³ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The entity must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

¹⁴ 11 C.F.R. § 109.10(b); *see* 52 U.S.C. § 30104(c). *See also* Explanation and Justification for Section 109.10, 68 Fed. Reg. 404, 415 (Jan. 3, 2003) (stating that independent expenditures greater than \$250 must be filed in accordance with the quarterly reporting schedule specified in sections 104.5(a)(1)(i) and (ii)).

¹⁵ 52 U.S.C. § 30104(c)(1), (2); 11 C.F.R. § 109.10(c). There are important practical reasons for the quarterly reporting requirement — for example, these reports disclose all independent expenditures the entity made during the quarterly reporting period, including those that fall outside the 24-Hour and 48-Hour reporting requirements. 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10. As a practical matter, the Commission has no other means of determining whether an entity that fails to file a quarterly report or verified statement has met its reporting obligations for that quarter. For example, an independent expenditure made within 24 hours of an election is not reportable on 24-hour or 48-hour reports and would only be disclosed on a quarterly report. Similarly, if a committee made one independent expenditure of \$250 or greater, but less than \$1,000, it would also only be disclosed on a quarterly report. 11 C.F.R. § 109.10(b) and (d).

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contributions in a timely manner.¹⁶ Accordingly, there is reason to believe that STPE violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) and (c).

¹⁶ 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

IV. RECOMMENDATIONS

1. Open a MUR in RR 15L-39;
2. Find reason to believe that State Tea Party Express violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) and (e);
3. Authorize conciliation with State Tea Party Express prior to a finding of probable cause to believe;
4. Approve the attached Factual and Legal Analysis;
5. Approve the attached Conciliation Agreement; and
6. Approve the appropriate letter.

Daniel A. Petalas
Acting General Counsel

Date

3-4-16

Kathleen Guith
Acting Associate General Counsel for Enforcement

Peter G. Blumberg
Assistant General Counsel

Rachel A. Flipse
Attorney

Attachments:

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENT: State Tea Party Express MUR

6
7 **I. INTRODUCTION**

8 The Commission's Reports Analysis Division ("RAD") referred State Tea Party Express
9 ("STPE") to the Office of General Counsel ("OGC") because it failed to timely file its 2014 July
10 Quarterly Report regarding independent expenditures made and contributions received. STPE
11 disclosed the expenditures on two 24-Hour Reports in April 2014. Based on the available
12 information, the Commission finds reason to believe that State Tea Party Express violated
13 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) and (e) by failing to timely file its 2014 July
14 Quarterly Report.

15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Background**

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18 registered with the Commission as a political committee and therefore does not file regular
19 disclosure reports with the Commission. In April 2014, STPE filed two 24-Hour Reports
20 disclosing a total of \$106,137.99 in independent expenditures.² STPE did not file a July
21 Quarterly Report for independent expenditures made during the corresponding quarterly
22 reporting period of April 1, 2014 through June 30, 2014.

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² See RR 15L-39 at 1 (Oct. 27, 2015). STPE had not previously reported any expenditures or receipts to the Commission.

On August 7, 2014, RAD sent STPE a Notice of Failure to File concerning the 2014 July Quarterly Report, which had been due on July 15, 2014.³ STPE filed a 2014 July Quarterly Report on August 28, 2014.⁴ The report disclosed the independent expenditures previously disclosed on the two 24-Hour Reports but did not disclose any additional activity.⁵ Five months later, on January 28, 2015, RAD sent STPE a Request for Additional Information inquiring whether STPE had received any contributions intended to further the specific independent expenditures that it had reported.⁶ On March 4, 2015, STPE filed an Amended 2014 July Quarterly Report, which made no changes to the previously disclosed expenditures but included receipts totaling \$111,000 that were not previously disclosed.⁷

RAD referred STPE to OGC for its failure to timely file the 2014 July Quarterly Report. After the matter was referred to OGC, STPE's treasurer submitted a response explaining that she had mistakenly believed that non-registered entities such as STPE were only required to file 24-Hour Reports.⁸ She noted that the independent expenditures were accurately disclosed to the public in advance of the election via the timely 24-Hour Reports.⁹ She further stated that STPE

³ See RR 15L-39 at 1.

⁴ See *id.* at 2.

⁵ See *id.*

⁶ See *id.*

⁷ See *id.*

⁸ STPE Resp. at 1 (Nov. 24, 2015).

⁹ *Id.*

had reviewed its internal reporting process and “plans to work with others who are more familiar with the requirements of non PAC entities for future cycles should we become active.”¹⁰

B. Analysis

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In addition, entities that are not political committees within the meaning of the Act that spend in excess of \$250 on independent expenditures during a calendar year with respect to a given election must also file a quarterly report for any quarterly period in which the independent expenditures exceed \$250 and any subsequent quarterly period during that calendar year when

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¹² 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 109.10(c). The entity must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

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55 additional independent expenditures are made.¹⁴ Such reports must disclose the independent
56 expenditures and contributions in excess of \$200 made for the purpose of furthering the reported
57 independent expenditures.¹⁵

58 During the second quarter of 2014, STPE made \$106,137.99 in independent expenditures
59 but failed to file a 2014 July Quarterly Report disclosing these expenditures and the associated
60 contributions in a timely manner. Accordingly, the Commission finds reason to believe that
61 STPE violated 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10(b) and (e).

¹⁴ 11 C.F.R. § 109.10(b); *see* 52 U.S.C. § 30104(c). *See also* Explanation and Justification for Section 109.10, 68 Fed. Reg. 404, 415 (Jan. 3, 2003) (stating that independent expenditures greater than \$250 must be filed in accordance with the quarterly reporting schedule specified in sections 104.5(a)(1)(i) and (ii)).

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